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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/887,042	06/25/2001	Nobuo Asano	31238-172689	6836	
26694	7590 04/29/2004		EXAMI	NER	
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP			VO, DON N	VO, DON NGUYEN	
P.O. BOX 34385 WASHINGTON, DC 20043-9998		ART UNIT	PAPER NUMBER		
			2631	10	
			DATE MAILED: 04/29/2004	b	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions for many to a residue based the provisions of 30°R R 1.35(4). In no event, however, may a reply be timely filed - Extensions for many to specified above is less than thiny (30) days, a reply within the statutory minimum of thiny (30) days will be considered timely. - If the period for reply specified above, the maximum statutory priority within the statutory minimum of thiny (30) days, a reply within the statutory minimum of thiny (30) days will be considered timely. - If No period for reply specified above, the maximum statutory priority within the statutory minimum of thiny (30) days will be considered timely. - If No period for reply specified above, the maximum statutory priority will be communication. - If No period for the statutory and the statutory minimum of the communication. - If No period for the statutory than the statutory minimum of the communication. - If No period for the statutory and the statutory minimum of the communication. - If No period for the statutory and the statutory minimum of the communication. - If No period for the statutory and the statutory minimum of the communication. - If No period for the statutory and the statutory minimum of the communication. - If No period for the statutory minimum of the communication. - If No period for the statutory minimum of the statutory minimum o								
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— The MALING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION. Extensions of time may be available under the processes of 3T CRT 1.35(a). In no event, however, may a reply be timely fled If the period for reply specified shows is less than thely (0) days, a reply within the adultiony minimum of thinly (0) days will be considered timely. If the period for reply specified shows is less than thely (0) days, a reply within the adultiony minimum of thinly (0) days will be considered from the considered period for reply will, by statular, croses the application to become AdulticCNCD (SS U.S.C. § 133). Finding to reply within the soft or extended period for reply will, by statular, croses the application to become AdulticCNCD (SS U.S.C. § 133). The period for reply specified become the resulting elists of this continuous co	Oπice Action Summary	Examiner	Art Unit					
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1) Responsive to communication(s) filed on 25 August 2003. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 8-17 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) 8-17 is/are rejected. 7) Claim(s) is/are allowed. 6) Claim(s) are subjected to. 8) Claim(s) are subjected to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. Altachment(s) 1) Notice of Draftsperson's Patent Drawing Review (PTO-948)	 THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any 							
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Art Unit: 2631

DETAILED ACTION

Reissue Applications

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

A duplicate of the declaration filed in the original reissue application (RE 37,420) was submitted in this current reissue application. The problem is that the error for filing the original reissue application was corrected in that reissue application (RE 37,420). Therefore, what further error occurred or is present in the parent patent (5,677,929) for which this current reissue application was filed?

2. Claims 8-11 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. RE37,420. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 3 of RE37,420 covers and encompasses the limitations of claim 10 of the instant application. Moreover, it is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963).

Recapturing

5. Claims 8-11 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc.* v. *Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement,* 131 F.3d 1464, 45 USPQ2d 1611 (Fed. Cir. 1997); *Ball Corp.* v. *United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35

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U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application. See MPEP 1412.02.

The claimed limitation of obtaining the spreading codes by multiplying the orthogonal codes with a second PN code having the same code as the first PN code but having different time phase thereby making the number of channels in the same cell larger than the numbers of the orthogonal spread codes is presented and repeatedly argued during the prosecution of the original patent (5,677,929). See arguments in the Amendments filed on 1/22/1996, 8/2/1996 and the Appeal Brief filed on 12/16/1996. As a result, claims 1 and 2 are allowed in the original patent (5,677,929). However, the limitation of thereby making the number of channels in the same cell larger than the numbers of the orthogonal spread codes as a result of multiplying the orthogonal codes with a second PN code having the same code as the first PN code but having different time phase is now omitted in this reissue application. Therefore, claims 8-11 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DON N VO whose telephone number is (703) 305-4885. The examiner can normally be reached on 8:30AM-5:00PM, Tuesday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MOHAMMAD GHAYOUR can be reached on (703) 306-3034. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DON N VO Primary Examiner Art Unit 2631